

1 (The document referred to,  
2 having been previously marked  
3 for identification as Mass  
4 Media Bureau Exhibit No. 1,  
5 was received into evidence  
6 except for pages 1 through 4  
7 and pages 20 through 30, which  
8 were rejected.)

9 JUDGE STEINBERG: Now, having said that, on pages  
10 1 and 2 there is a section called Program Origination for  
11 W276AQ consistently rejected. And in those paragraphs there  
12 are Commission rulings and pleadings and things cited.

13 I would have no problem with you bringing copies  
14 of those rulings and pleadings in and attempting to offering  
15 them next week because the hearing designation order refers  
16 to that aspect of this case as, I guess, constituting a  
17 motive to do what the people have done. You know, if you  
18 want those things to be considered, bring copies of them in  
19 and then label them and number them, and then we will deal  
20 with them again next week.

21 By the way, you don't have to -- you don't have to  
22 continue your numbering scheme. If you have another  
23 exhibit, just number the first page 1 and continue numbering  
24 to the end.

25 Okay, so that takes care of Exhibit No. 1.

1 MR. ARONOWITZ: One moment, Your Honor.

2 (Pause.)

3 MR. ARONOWITZ: Your Honor, if those aren't in  
4 already, we will bring those in on Monday.

5 JUDGE STEINBERG: I don't think they are here.

6 MR. ARONOWITZ: I was just trying to look and I  
7 don't want to waste the Court's time, but I think we had  
8 those attached, and I may be absolutely wrong.

9 JUDGE STEINBERG: Okay. If they are, they are.

10 MR. ARONOWITZ: Okay, we will deal with that.

11 JUDGE STEINBERG: You don't have to do it now.

12 MR. NAFTALIN: Also for clarification, Your Honor,  
13 there would be -- when the appropriate time for legal  
14 argument comes, the parties are free to cite --

15 JUDGE STEINBERG: Sure.

16 MR. NAFTALIN: -- the precedent they want, whether  
17 they showed up in a previous exhibit or not, aren't they?

18 JUDGE STEINBERG: Right.

19 MR. NAFTALIN: Okay.

20 JUDGE STEINBERG: But it's so easy to have  
21 everything -- like I can't go out and get pleadings.

22 MR. NAFTALIN: Oh, I understand. I was talking  
23 about decisions.

24 JUDGE STEINBERG: Yes, if it's published.  
25 Sometimes it's not published.

1 MR. ARONOWITZ: Okay. Well, we have them all.

2 JUDGE STEINBERG: Okay.

3 MR. ARONOWITZ: We have them all, one way or the  
4 other. So we are done with Exhibit 1?

5 JUDGE STEINBERG: Yes.

6 MR. ARONOWITZ: Okay, I identify for the record  
7 Mass Media Bureau Exhibit 2, which is a 47-page document,  
8 which represents the February 15, 1995 complaint filed at  
9 the Commission by Universal Broadcasting.

10 JUDGE STEINBERG: Okay, I get 48 pages. I thinks  
11 Ms. Friedman checked that out, and she got 48 also.

12 MR. ARONOWITZ: I apologize. Forty-eight pages,  
13 excuse me.

14 JUDGE STEINBERG: Okay, the document described  
15 will be marked for identification as Bureau Exhibit 2.

16 (The document referred to was  
17 marked for identification as  
18 Mass Media Bureau Exhibit No.  
19 2.)

20 JUDGE STEINBERG: Any objections? Mr. Riley?

21 MR. RILEY: Yes, Your Honor. I object to the  
22 entirety of it, and here is why I object to the entirety.  
23 It's not offered as proof. It goes to your original  
24 comment. But one of the problems of putting in the record  
25 something of this sort is that it really doesn't advance the

1 record.

2 I think we can all agree, and the HDO itself  
3 recites that a complaint was filed by Universal. The  
4 contents of the complaint beyond what the HDO may cite are,  
5 I think, unnecessary for the record. And by putting in the  
6 entirety of the complaint, although only for proof that in  
7 fact such a complaint exists, we lead to the possibility of  
8 people arguing that the complaint made a particular  
9 assertion.

10 Now, again, they would say that's for official  
11 notice. That proves the assertion was made. Well, what is  
12 the significance of the assertion having been made. From  
13 Monticello Mountaintop's position, there is absolutely no  
14 significance other than an argument not being made presently  
15 in the hearing. Monticello Mountaintop was not served with  
16 a copy of this complaint, nor was a copy of this complaint  
17 furnished to Monticello Mountaintop by the FCC.

18 JUDGE STEINBERG: Contemporaneously.

19 MR. RILEY: Not until the discovery process in  
20 this proceeding.

21 JUDGE STEINBERG: Right.

22 MR. RILEY: That's right. And, of course, whether  
23 we received it in the discovery process or not is irrelevant  
24 to the issues being tried in this proceeding.

25 So the existence of the document, while

1     acknowledged in the HDO, is one thing. The precisely highly  
2     detailed contents of the document are another thing. And it  
3     seems to me even for official notice purposes the detailed  
4     contents are unimportant to how this case is resolved.  
5     That's my view of it, Your Honor.

6                 JUDGE STEINBERG: Mr. Naftalin?

7                 MR. NAFTALIN: Your Honor, we also object to Mass  
8     Media Bureau Exhibit No. 2, again for the reasons stated by  
9     Mr. Riley. In addition -- which is also true, this matter  
10    was not served upon Mr. Turro until after the HDO issued  
11    during the course of this proceeding. And there may well be  
12    some challenge about when notice was given or not given or  
13    that sort of thing.

14                In addition, any matters in here which are  
15    relevant to the case, I believe are entering in at least one  
16    other place somewhere else; and also, there are a number of  
17    matters that are raised in this complaint and comments  
18    attached to this complaint which are not -- and by complaint  
19    I mean the February 15, 1995 letter. I don't want to  
20    misstate myself and acknowledge that it was in some way  
21    procedurally a complaint. There are matters in here which  
22    are clearly outside the scope of this proceeding.

23                And if we go, I think part of the heart of the  
24    matter is the Cohen, Dippell & Everist engineering report,  
25    which is offered elsewhere under Mr. La Follette's signature

1 in a subsequent exhibit. But there are many matters that  
2 are addressed in there that have to do with programming and  
3 materials that may have been on the air or not on the air,  
4 or when they were aired that are not relevant to issues in  
5 this case. The issues in this case relevant to Mr. Turro  
6 are more technical than that.

7 The HDO has not designated a matter which we think  
8 this addresses. And there are copies of letters, and if  
9 it's in here somewhere, I think there may be newspaper  
10 articles or whatever; things like that that are just not  
11 germane to the issues.

12 We will acknowledge that Universal's attorneys  
13 filed something in secret that was dated February 15, 1995,  
14 but the assertions herein we think, to the extent there is  
15 relevant material, it comes in somewhere else, and to a  
16 large extent, the rest of it is irrelevant.

17 JUDGE STEINBERG: Mr. Aronowitz?

18 MR. ARONOWITZ: Your Honor, first of all, with  
19 respect to programming, I disagree. I think programming  
20 issues are relevant in this proceeding under the designated  
21 issues.

22 Second of all, the engineer -- second of all, the  
23 engineering, while it does come in elsewhere, I will  
24 acknowledge that. Nevertheless, it's been a consistent  
25 position of Mr. Turro that somehow the Bureau has been led

1 by the nose by Universal Broadcasting with respect to its  
2 investigation and its rulings and its course of conduct in  
3 this proceeding and events leading up to this proceeding.

4 So insofar as it is alleged that the Bureau had no  
5 business bringing this action to begin with, I think the  
6 complaint is relevant.

7 Mr. Helmick?

8 JUDGE STEINBERG: I'm supposed to say Mr. Helmick.

9 MR. ARONOWITZ: Oh, sorry. That's all I have to  
10 say, Your Honor.

11 JUDGE STEINBERG: Let the record reflect a little  
12 humor there.

13 MR. HELMICK: Your Honor, I would have, as far as  
14 the complaint, we would be willing to say, at least the  
15 narrative portions of the complaint, the cover letter of the  
16 complaint would be for official notice only and the fact  
17 that the claim was filed; not necessarily for the truth of  
18 what is in there. That will have to be established through  
19 independent witnesses.

20 Certainly as to the attachment, the attestation  
21 license of Monticello Mountaintop, that's their own filing.  
22 There shouldn't be any problem with that. Statement of  
23 William Getz, that's their own engineer. There shouldn't be  
24 a problem with that. And then there is a letter from Mr.  
25 Getz. Attachment 2 and Attachment 3 is a statement of Mr.

1 Warshaw. They will have Mr. Warshaw here to cross-examine  
2 him on that. And the engineering statement of Cohen,  
3 Dippell & Everist, and it does contain materials other than  
4 engineering that they will have Mr. La Follette to cross-  
5 examine on that.

6 JUDGE STEINBERG: Okay, I'm going to receive the  
7 exhibit solely for background and official notice purposes  
8 at this time. If there is testimony going to the factual  
9 matters contained herein which -- you know, then that  
10 factual testimony will be accepted for whatever value it  
11 has. But right now the exhibit is received for official  
12 notice purposes only and background.

13 (The document referred to,  
14 having been previously marked  
15 for identification as Mass  
16 Media Bureau Exhibit No. 2,  
17 was received into evidence.)

18 MR. RILEY: Your Honor, I understand your ruling.  
19 I would like to know, though, what use counsel intends to  
20 make of this in trial. For official notice really,  
21 everybody would agree that the complaint was filed, and I  
22 think the Bureau would agree that it wasn't furnished to the  
23 parties in this proceeding, the private parties.

24 There is a lot of material attached to it which  
25 doesn't prove anything independent of a witness sponsoring



1 it. Would it be appropriate for the Bureau to cite as  
2 official notice that the Commission was furnished with an  
3 article from the Northern New Jersey Business Journal, which  
4 has got Bates stamp page 69 on it? Or is it really only  
5 appropriate for the Bureau and official notice to say that a  
6 pleading or a complaint of 48 pages was filed on February  
7 15th?

8 JUDGE STEINBERG: Well, they can do anything they  
9 want. And when I write my findings, I might just, you know,  
10 say a pleading of 48 pages was filed.

11 MR. RILEY: Yes.

12 JUDGE STEINBERG: I mean, I just don't want to  
13 restrict right now what they can do with the. They may have  
14 plans for it that they don't even know about yet.

15 MR. RILEY: Well, in that event, I would like  
16 to -- I am really concerned about the document in the record  
17 for official notice that contains a lot of factual material,  
18 and I think I would like to know who the Bureau would  
19 present -- and I don't -- well, let me withdraw that.

20 JUDGE STEINBERG: Okay.

21 MR. RILEY: But I can just see arguments being  
22 made back and forth in the posthearing pleadings about what  
23 in here -- well.

24 JUDGE STEINBERG: If Mr. Warshaw takes the stand  
25 and he's not asked about that telephone call, it's not

1     proved.  If he is asked and it turns out that he survives  
2     whatever attacks come at him about that telephone call, and  
3     if it's relevant and material, it might -- then it might be  
4     considered to be a fact.

5             MR. RILEY:  Well, if Mr. Warshaw takes the stand  
6     and Mr. Naftalin has called him, and Mr. Naftalin asks him  
7     questions that don't involve this phone call, then the  
8     Bureau can't ask Mr. Warshaw questions about this phone  
9     call.

10            JUDGE STEINBERG:  That's right.

11            MR. RILEY:  So there is -- so then we have a  
12     statement in here --

13            JUDGE STEINBERG:  And it's too late now to name,  
14     you haven't named him as a direct case witness.  It's too  
15     late now.

16            MR. RILEY:  So there is no proof in the record  
17     that Mr. Warshaw did what this says.  That's my concern  
18     about this.

19            JUDGE STEINBERG:  But Mr. Naftalin might ask him  
20     about that.

21            MR. RILEY:  Oh, I recognize that.

22            JUDGE STEINBERG:  He might ask him about the phone  
23     call, or it might come out another way.  "I made a phone  
24     call."  I mean, but anyway.

25            By the way, can we stipulate, can everybody

1 stipulate that the Mass Media Bureau Exhibit No. 2 was not  
2 disclosed to Turro and was not disclosed to MMBI prior to  
3 the discovery phase of this proceeding?

4 MR. NAFTALIN: Your Honor, Mr. Turro wasn't served  
5 with it, correct.

6 JUDGE STEINBERG: You weren't served with it?

7 MR. NAFTALIN: No.

8 JUDGE STEINBERG: Okay. Neither was MMBI?

9 MR. RILEY: Precisely, Your Honor.

10 JUDGE STEINBERG: Okay, can we stipulate to that?  
11 Everybody, everybody has to say yes. Mr. Riley?

12 MR. RILEY: Yes.

13 MR. ARONOWITZ: Hold on. I'm thinking.

14 MR. NAFTALIN: Yes.

15 MR. ARONOWITZ: I'm thinking.

16 (Pause.)

17 MR. ARONOWITZ: Could we stipulate that -- let  
18 me -- while it is true that the Bureau didn't serve it, the  
19 Bureau believes that Mr. Turro did in fact obtain a copy of  
20 the complaint early on in this proceeding.

21 JUDGE STEINBERG: So you can ask him on the stand  
22 if it's relevant.

23 MR. ARONOWITZ: Okay.

24 MR. RILEY: There is one other thing about it.

25 JUDGE STEINBERG: Okay, so, Mr. Aronowitz, you

1 would agree that it wasn't served on --

2 MR. ARONOWITZ: That it was not served, correct.

3 JUDGE STEINBERG: Okay. And Mr. Helmick?

4 MR. HELMICK: Yes, Your Honor.

5 MR. RILEY: Your Honor, one other last thing about  
6 it, because it was never served on and I don't think came  
7 into the possession of MMBI until this case began its  
8 discovery phase, I would like Mr. Aronowitz to represent  
9 that this is the entirety of it. Since it was never served  
10 upon MMBI, not merely that this is the complaint or a part  
11 of it, but this is all; that there were not pages that were  
12 filed by Universal with the Commission with this February 15  
13 complaint or concurrently with it that haven't been included  
14 in Exhibit 2; that this is not an edited version of the  
15 Universal complaint.

16 MR. HELMICK: You have -- in discovery you have  
17 been given a copy of the complete complaint that was filed.

18 MR. RILEY: And this is identical to --

19 MR. HELMICK: No, it is not. This complaint  
20 leaves out extensive program logs of commercial  
21 announcements, and that is not included in there.

22 MR. RILEY: The transcript, for example.

23 MR. HELMICK: The transcripts. That's about 100  
24 and some odd pages.

25 MR. RILEY: So, Your Honor, it's important to

1 recognize that what's been received as Bureau Exhibit 2 and  
2 describe the complaint filed by Universal is not the  
3 complaint filed by Universal.

4 JUDGE STEINBERG: Okay, I didn't know that.

5 MR. RILEY: Well, I thought it important because  
6 what we have is official notice being taken of something  
7 that is not what it's representing itself to be.

8 MR. ARONOWITZ: We can do one of two things. We  
9 can either say "excerpts" or we can go ahead and we can put  
10 the extra pages in.

11 MR. RILEY: Well, I didn't know --

12 JUDGE STEINBERG: See if you can work out a  
13 stipulation as to what was left out. I mean, if it's 150  
14 pages of transcripts of commercial announcements, it's a lot  
15 of trees being cut down for no purpose at all.

16 So you all can work that out.

17 MR. RILEY: Um-hmm.

18 JUDGE STEINBERG: Let's turn to No. 3.

19 MR. ARONOWITZ: Four. Three, three, excuse me.

20 I next identify a two-page document as Mass Media  
21 Bureau Exhibit No. 3, which consists of a routing and  
22 transmittal slip from the Mass Media Bureau to the  
23 Compliance and Information Bureau dated March 8, 1995.

24 JUDGE STEINBERG: Okay, the document described  
25 will be marked as Bureau Exhibit 3.

1 (The document referred to was  
2 marked for identification as  
3 Mass Media Bureau Exhibit No.  
4 3.)

5 JUDGE STEINBERG: Okay, any objections?

6 MR. ARONOWITZ: No objection.

7 MR. RILEY: No objection for official notice, Your  
8 Honor.

9 JUDGE STEINBERG: Okay. Then the document will be  
10 received.

11 (The document referred to,  
12 having been previously marked  
13 for identification as Mass  
14 Media Bureau Exhibit No. 3,  
15 was received into evidence.)

16 MR. RILEY: For?

17 JUDGE STEINBERG: Official notice.

18 MR. RILEY: Official notice.

19 JUDGE STEINBERG: I presume that this is in here  
20 to merely show how Mr. Loginow became involved in this; is  
21 that correct, Mr. Aronowitz?

22 MR. ARONOWITZ: I'm sorry, Your Honor?

23 JUDGE STEINBERG: I assume that this is in here  
24 for the purpose of showing how Mr. Loginow became involved  
25 in this?

1 MR. ARONOWITZ: Yes, Your Honor.

2 JUDGE STEINBERG: Okay, let's go to the next.

3 MR. ARONOWITZ: Okay, I'll next identify as Mass  
4 Media Bureau Exhibit No. 4 a six-page document that is a  
5 radio station inspection report dated May 23, 1995. It does  
6 not necessarily say so, but this was prepared by Mr.  
7 Loginow.

8 JUDGE STEINBERG: Okay, the document described  
9 will be marked for identification as Bureau Exhibit 4.

10 (The document referred to was  
11 marked for identification as  
12 Mass Media Bureau Exhibit No.  
13 4.)

14 MR. RILEY: Your Honor, Mr. Loginow is appearing  
15 as a witness on behalf of the Bureau. Will he be sponsoring  
16 the document?

17 MR. ARONOWITZ: Sure.

18 MR. RILEY: So he's available for cross-  
19 examination on all the contents of this; not merely the  
20 later exhibit that is his statement?

21 MR. ARONOWITZ: Of course.

22 MR. RILEY: Okay. Well, with that, I have no  
23 objection, Your Honor.

24 MR. NAFTALIN: No objection.

25 JUDGE STEINBERG: Okay, Bureau Exhibit 4 is

1 received.

2 (The document referred to,  
3 having been previously marked  
4 for identification as Mass  
5 Media Bureau Exhibit No. 4,  
6 was received into evidence.)

7 MR. ARONOWITZ: I next identify as --

8 (Pause.)

9 JUDGE STEINBERG: Oh, don't pay any attention to  
10 what I'm doing. Just talk.

11 MR. ARONOWITZ: Oh. Before I waited.

12 JUDGE STEINBERG: No, no.

13 MR. ARONOWITZ: Okay.

14 JUDGE STEINBERG: If I'm sitting here looking  
15 at -- just ignore me. You just go on and talk because I can  
16 listen and look at the same time.

17 MR. ARONOWITZ: All right. Okay, I next identify  
18 as Mass Media Bureau Exhibit No. 5 a five-page statement  
19 that represents the engineering statement of Jules Cohen  
20 dated July 9, 1997.

21 JUDGE STEINBERG: Okay, the document described  
22 will be marked as Bureau Exhibit 5.

23 //

24 //

25 //



1 (The document referred to was  
2 marked for identification as  
3 Mass Media Bureau Exhibit No.  
4 5.)

5 JUDGE STEINBERG: And we have already set a date  
6 for when Mr. Cohen will --

7 MR. NAFTALIN: And when you say July 9, you're  
8 including the executed cover statement that's dated  
9 subsequent to that, right?

10 JUDGE STEINBERG: Yes, one page is basically a  
11 cover sheet, and then the remaining pages are of an earlier,  
12 a July 9th statement.

13 MR. NAFTALIN: Right.

14 MR. ARONOWITZ: And he will be here.

15 MR. NAFTALIN: Right. No objection.

16 MR. RILEY: I have no objection.

17 Your Honor, in connection with the Bureau's  
18 exhibits, after Exhibit 1 they are not numbered as exhibits  
19 ordinarily would be. And as I think the order asked that  
20 they be numbered, that is, striatum within the exhibit  
21 beginning with one.

22 JUDGE STEINBERG: Yes.

23 MR. RILEY: Are we to renumber --

24 JUDGE STEINBERG: No, we --

25 MR. RILEY: This is a five-page exhibit.

1 JUDGE STEINBERG: -- are not renumbering 700 pages  
2 of exhibits.

3 MR. RILEY: Well, that's what I wanted to --

4 JUDGE STEINBERG: Yes.

5 MR. RILEY: When this is cited for the record,  
6 will it be cited --

7 JUDGE STEINBERG: It will be cited as 88.

8 MR. RILEY: Okay.

9 JUDGE STEINBERG: Page 88.

10 MR. RILEY: Okay. That's what I wanted to know.

11 JUDGE STEINBERG: Yes, we will use the numbers at  
12 the bottom of the -- the Bates stamp numbers at the bottom  
13 of the pages when we talk to the witnesses and when we cite  
14 them. It's Bureau Exhibit 5, page 88.

15 MR. RILEY: Okay.

16 MR. ARONOWITZ: So wait a minute. Excuse me.

17 Now I'm confused, and I'll tell you this is my  
18 medication. Does that mean if we exclude, for example,  
19 Exhibit 4, it will just be -- there will never be an Exhibit  
20 4. We will refer to Exhibit 5 as Exhibit 5?

21 JUDGE STEINBERG: Yes. There will never --

22 MR. ARONOWITZ: That's what I thought.

23 JUDGE STEINBERG: If Exhibit 4 is rejected, there  
24 ain't going to be another Exhibit 4.

25 MR. ARONOWITZ: Okay, just wanted to make sure.

1     Okay.

2                 JUDGE STEINBERG: We will just use the page  
3 numbers that are stamped on the bottom because I'm not going  
4 to ask anybody to renumber 700 pages.

5                 MR. ARONOWITZ: I just wanted to make sure I was  
6 clear.

7                 JUDGE STEINBERG: Okay. Let's go to No. 6.

8                                 (The document referred to,  
9                                 having been previously marked  
10                                for identification as Mass  
11                                Media Bureau Exhibit No. 6,  
12                                was received into evidence.)

13                MR. ARONOWITZ: So we are on No. 6. I now  
14 identify as Mass Media Bureau Exhibit No. 6 a 17-page  
15 statement that represents the statement of Wilson La  
16 Follette dated October 23, 1997. That would be his  
17 statement plus any exhibits.

18                JUDGE STEINBERG: Okay, executed as the 22nd day  
19 of October.

20                MR. ARONOWITZ: Oh, excuse me.

21                JUDGE STEINBERG: And that's the cover page, and  
22 then the rest of it is a February '95 statement.

23                MR. ARONOWITZ: Excuse me.

24                JUDGE STEINBERG: The document described will be  
25 marked for identification as Bureau Exhibit 6.

1 (The document referred to was  
2 marked for identification as  
3 Mass Media Bureau Exhibit No.  
4 6.)

5 JUDGE STEINBERG: Any objection?

6 MR. RILEY: Your Honor, I object to those portions  
7 of it which undertake to address programming practices. It  
8 is possible to do that by pointing you to particular areas  
9 of the exhibits. At the bottom of page 99 he begins, Mr. La  
10 Follette begins this.

11 There are two reasons for it. One is a lack of  
12 expertise, and then one might argue the layperson can be  
13 expert in programming. So there is another reason for it.  
14 As I read the exhibit, Mr. La Follette is talking about one  
15 day in the life of his experience with radio and in the life  
16 of these broadcast stations. And it says here on page 99  
17 that the programming is fully oriented to the Bergen County  
18 and approximate area. But that's -- that's what Mr. La  
19 Follette may have observed over the period of four to six  
20 hours on one day in the life of these stations.

21 I think that if Mr. La Follette's expertise is in  
22 engineering matters, as I understand it, the record gains  
23 absolutely no benefit from this being in here. And if it is  
24 in here, Mr. La Follette is going to have to be cross-  
25 examined on all of this, which we would do, and, again, even

1 after that I think the record benefits not at all from that.  
2 I never understood that the Bureau intended to offer Mr. La  
3 Follette for programming information.

4 And while it's been in here, it's been in here  
5 because this was part of the Universal complaint statement  
6 that he filed years ago where for some reason he felt  
7 impelled to say this.

8 That's my objection to it, Your Honor.

9 MR. NAFTALIN: Your Honor, we object to it as  
10 well, at least to the following extent. We don't object to  
11 Mr. La Follette offering testimony about what he observed,  
12 what he did or saw, or if he performed a study within his  
13 area of expertise.

14 JUDGE STEINBERG: Okay, what he observed?

15 MR. NAFTALIN: What he personally observed.

16 JUDGE STEINBERG: Engineering-wise or everything?

17 MR. NAFTALIN: Yes, engineering. You know, he is  
18 being offered as an -- I believe he's being offered as an  
19 engineering expert.

20 JUDGE STEINBERG: Okay.

21 MR. NAFTALIN: He's the consulting engineer. To  
22 the extent he measured a frequency, looked at an antenna,  
23 that sort of thing that's unobjectionable to us. He makes a  
24 number of observations about programming matters, which I  
25 will dispute with Mr. La Follette that there is a place in

1 the HDO that brings in an issue that encompasses what Mr. La  
2 Follette is discussing about programming.

3 Also, Mr. La Follette offers a number of  
4 conclusion such as "were observed by the investigators to be  
5 in flagrant violation of the FCC's rules and policies." He  
6 has not been offered as an expert to offer ultimate  
7 conclusions about that sort of material either.

8 So we object, similar to the objection we had  
9 involving Exhibit No. 2 from the Bureau, we object to the  
10 matters that are either outside of Mr. La Follette's  
11 expertise or outside the issues designated in this case.

12 MR. RILEY: Your Honor, on the programming, the  
13 problem is as Mr. Naftalin just said, and I said, I think,  
14 and you may well believe that it can be resolved in cross-  
15 examination, but if you would look at page 102 of the  
16 exhibit, Your Honor, what you find is that Mr. La Follette  
17 himself is undertaking to support his observations about  
18 programming; not merely from what he heard, which, in my  
19 view, can't have extended over more than several hours on a  
20 single day, but on documents. He says these are well  
21 demonstrated in promotion material and newspaper clippings.

22 Well, I can't cross-examine him on this. So what  
23 I am stuck with is a conclusion -- there are no documents  
24 attached to this exhibit. There are some wave forms off of  
25 a meter that he's worked with, and a map. The documents

1     aren't there.

2                 I think that any references in this exhibit to  
3     programming are going to lead to a tainted records;  
4     conclusions from an engineer who was up there doing  
5     engineering matters, which are formed not merely from  
6     personal observation of what he may have heard, but from  
7     something that we don't have in front of us.

8                 MR. NAFTALIN: That's true. Cross-examination, if  
9     he's offering something in the form of testimony outside of  
10    his expertise, largely, maybe substantially outside the  
11    issues in this case. Cross-examination in those areas  
12    don't, first of all, may be giving dignity or weight to  
13    something that shouldn't be here in the first place if he  
14    offered his personal views about the Mona Lisa, we would be  
15    bringing a discussion of the Mona Lisa in this case from a  
16    man who doesn't have -- who hasn't been recognized as an art  
17    expert.

18                Again, we don't object to what he did as a  
19    technical matter, his engineering expertise, that's subject  
20    to cross-examination. But there is a lot of extraneous  
21    material here which could pollute the record more than help  
22    it.

23                JUDGE STEINBERG: Mr. Aronowitz?

24                MR. ARONOWITZ: First of all, and I'm going to  
25    defer to Mr. Helmick on this as soon as you let me. But

1 first of all, what Mr. La Follette heard, he will be here,  
2 you can describe it to him -- you can cross-examine him on  
3 that.

4 In terms of the references here to -- in terms of  
5 the reference in here to attachments, those are contained in  
6 Exhibit 2, so you do have those and you will be able to  
7 examine him on that.

8 I'm going to defer at this point to Mr. Helmick.

9 MR. RILEY: Well, Your Honor, if I could just  
10 respond before we go further. That's not necessarily true.  
11 Exhibit 2 is an incomplete exhibit in this record.

12 MR. ARONOWITZ: The attachments referred here are  
13 contained in Exhibit 2.

14 MR. RILEY: And the only way we can establish that  
15 is by questioning Mr. La Follette, and even if they are in  
16 Exhibit 2, we don't know that they are all the things he may  
17 have seen. What's in Exhibit 2 is what counsel for  
18 Universal selected to file with its complaint.

19 MR. ARONOWITZ: You can certainly ask him if he  
20 saw anything else.

21 JUDGE STEINBERG: Talk to me; not to each other.

22 MR. ARONOWITZ: And certain --

23 JUDGE STEINBERG: Okay. Mr. Helmick?

24 MR. HELMICK: Yes, Your Honor. I think you are  
25 being asked to put on blinders in this case here that



1 programming is not relevant to the issues designated, and it  
2 is certainly relevant to whether or not there has been a  
3 transfer of control of WJX in Monticello.

4 Whether it spans the majority of the programming  
5 on that station, local programming, not entertainment  
6 programming, but local program direct to Bergen County,  
7 which is not part of its service area, that is certainly  
8 relevant.

9 And a person, any person, whether he's an engineer  
10 or a layman, can make observations about what programming he  
11 heard that day. Mr. La Follette is not only an engineer,  
12 but he spent 29 years at the Commission; part of which I  
13 believe was in the compliance portion of the Commission.  
14 They can cross-examine on his expertise in that area.

15 JUDGE STEINBERG: Okay, so this statement is being  
16 offered for two purposes: One, not only engineering, but  
17 also for the purposes of showing through the programming  
18 that was heard by Mr. La Follette that there was a transfer  
19 of control or an abandonment of control to Mr. Turro, and  
20 that's evidenced by the programming of the station being --

21 MR. ARONOWITZ: In part, yes; in part.

22 JUDGE STEINBERG: In part, but programming of the  
23 station being more attuned to Bergen County, New Jersey,  
24 than Monticello, New York?

25 MR. HELMICK: That's correct, Your Honor.